

February 7, 2019 Planning Board/Board of Adjustment Minutes

Mr. Ford called the Meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m.

Members Present: Mr. Nace, Mr. Eschbach, Mr. Kastrud, Mr. Neary, Mr. Dix, Mr. Petitt, Mr. Kirkpatrick, Mr. Ford

Board Professionals Present: Atty. Mark Anderson, Robert Clerico, Andrea Malcolm

Members Absent: Mr. Mazza, Mr. Stothoff

Others Present:

Spatz: Atty. Joseph Novak

Fallone: Atty. Jolanta Maziarz, Planner Paul Grygiel

Mr. Ford welcomed Charles Neary as a member of the Board. He had been sworn by Atty. Anderson.

Open Public Meetings Act Notice: I would like to have placed in the minutes that the Open Public Meeting Requirements of Law have been satisfied by our notices dated January 17, 2019, as published in the Hunterdon County Democrat and January 16, 2019, as published in the Courier News. A copy of the notice has also been posted on the Township Website, the Bulletin Board in the Municipal Building and a copy has been filed with the Municipal Clerk.

Memorialization of Resolution: Powerco Partners LLC: Block 23, Lot 2.02, Route 173 West: Preliminary and Final Site Plan:

Motion: Mr. Kirkpatrick made a motion to memorialize the Resolution. Mr. Nace seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Nace, Mr. Eschbach, Mr. Ford

Fallone Group LLC; Block 22, Lot 34, Perryville Road:

Executive Session: Mr. Ford asked for a motion to convene in Closed Session as the Zoning Board for an Attorney/Client communication. Atty. Anderson said the appropriate motion would be to exclude the Public for the purpose of the Board discussing legal matters with their Attorney. Under the Sunshine Law, the Resolution requires the time and circumstances when the minutes of the Session would be released. Mr. Anderson said this being an attorney/client matter the privilege is perpetual so the minutes would not be released. If that was the Board's desire, that would be the appropriate motion.

Motion: Mr. Kirkpatrick made the motion to go into Executive Session at 7:04 p.m., with the terms as set forth above. Mr. Eschbach seconded the motion.

Vote: All Ayes, No Nays, Motion Carried

Mr. Ford announced that the Board and their Professionals would be convening downstairs in order that the Public would not have to vacate the room.

Mr. Ford announced that the Board was reconvening as the Board of Adjustment (BOA) to discuss the matter of the Interpretation of the Village Residential District (VR) side yard requirement. (7:44 p.m.)

He said the first question the BOA would be considering was whether twin homes in the VR were required to have two side yard setbacks. Atty. Anderson said applicant and their representatives were in attendance. He noted the request for the Interpretation came from the Board; however, it would be appropriate to give the applicant an opportunity to speak to the issue.

Mr. Kirkpatrick explained that he had reviewed the Land Use Ordinance regarding side yard requirements. He said the layout of the Fallone Subdivision provided for zero lot lines on one side of every lot and the building on that lot having no side yard. Mr. Kirkpatrick said the Ordinance did not allow a building without two side yards in the VR District. Mr. Kirkpatrick said the Multi-Residential (MR) District allows the proposed type of building to have one side yard. He concluded that any building in the VR District would require two side yard setbacks.

Atty. Anderson asked Atty. Maziarz if applicant wanted to be heard on the issue. Ms. Maziarz requested that the Board's Planner explain her findings. Applicant agreed with Planner Malcolm's memorandum. Ms. Malcolm said her memorandum lays out the background and provides comparative definitions but does not particularly offer a conclusion, since that is the Board's responsibility as to how the issue would be interpreted. Mr. Kirkpatrick noted the definition of a twin home closely parallels almost word for word the more common definitions of it but specifically excludes or is omitted from it the word that there must be a lot line along the common wall. He said the combination of the specific wording of the definition in combination with the inclusion of the footnote in the MR District leads him to believe that the definition and the intent for a minimum ten-foot side yard around the principle building was intentional. Mr. Ford asked if the Board would not draw the conclusion that not only was it intentional but also purposeful in that it reflected the Ordinance writers to have two different conditions in the two different Districts. Mr. Kirkpatrick said he could come to no other conclusion.

Atty. Maziarz asked that applicant's Planner provide testimony for the record, whereupon Atty. Anderson swore planner Paul Grygiel. Mr. Grygiel provided his credentials and they were acceptable to the Board. Ms. Maziarz asked Mr. Grygiel if his reading agreed with the Ordinance definition of twin houses as cited in Ms. Malcolm's memorandum that a twin house is a single family semi-detached dwelling within a two-dwelling building with only one wall in common with another dwelling provided. Ms. Maziarz asked if that definition would allow an entire twin unit to be on one lot. Mr. Grygiel said he did not believe the definition would; he also thought there were other factors in the Ordinance that speak against that particular Interpretation. He said the minimum lot width is forty-five feet. If you had two ten-foot side yards you would have a twenty-five foot wide building and with the twin-house zoning you would have two twelve-and-one-half-foot attached buildings. Mr. Grygiel said the Interpretation points toward separate lots for the proposed type of dwellings. Mr. Grygiel referenced the Moskowitz Book that defines a semi-detached dwelling as a one-family dwelling attached to another one-family dwelling by a common vertical wall, with each dwelling located on a separate lot. Mr. Grygiel cited the definition of a twin house dwelling in the B-2 District as a single-family semi-detached dwelling within a building with only one common wall between them. Mr. Grygiel said common sense from the lot width

requirement, matched with the Ordinance definition, speaks to the intention of having two-attached buildings, each on separate lots. He also noted Section 30-5.4 of the Ordinance limits the number of principal uses or buildings permitted on a lot except for wireless communications. Mr. Kirkpatrick thought accessory dwellings were allowed. He asked Mr. Grygiel if there was more than one type of use permitted within the VR District, i.e., a single family home. Mr. Grygiel said "Yes". Mr. Kirkpatrick said there would be no practical reason why you could not build a single-family dwelling on a minimum size lot with two side yard setbacks. Mr. Grygiel said the requirements are somewhat different for single-family dwellings in the VR District. Mr. Kirkpatrick asked if there was any place in the VR District of the Ordinance that explicitly says that a zero lot line is permitted. Mr. Grygiel does not believe the Ordinance indicates that two side yards are required in the VR District.

Mr. Kirkpatrick asked if a zero lot line would be allowed for any use in the MR District. Mr. Grygiel recollected that there is a twin definition in that District. He also noted discrepancies in the Ordinance in that there is a footnote in the MR District that is not present in the VR District. Mr. Kirkpatrick asked Mr. Grygiel if he was suggesting there was an error in the Ordinance. Mr. Grygiel said it appears there may be. He said if twin homes are allowed, which is a single-family detached dwelling in the VR and MR Districts, it doesn't seem logical to have one set of requirements in one district and not the other. Mr. Grygiel said it could have been an oversight. Mr. Kirkpatrick asked if the Board should ignore an oversight. Mr. Grygiel said the Board was open to an Interpretation. He said the Board's Planner had an Interpretation that was similar to his.

Mr. Kirkpatrick asked if the Ordinance definition includes the wall being the lot line for the VR District. Mr. Grygiel said the definition for the twin house does not. Mr. Kirkpatrick asked if the Township Committee explicitly excluded that for a reason. Mr. Grygiel said that was possible. Mr. Kirkpatrick asked Mr. Grygiel if he thought the Township Committee made an error in writing of the Ordinance. Mr. Grygiel re-emphasized the discrepancies in the Ordinance regarding the issue. Mr. Kirkpatrick asked if the proposed type of unit would function under the terms of a condominium agreement rather than that of a single-family ownership. Atty. Maziarz asked if the Ordinance provides for that to be imposed on an applicant. Mr. Grygiel said that is not permissible for the Board. Mr. Kirkpatrick indicated he was asking about the practicality of that type of agreement functioning for the proposed units. Mr. Grygiel said that is possible.

Atty. Maziarz referenced the Ordinance definition for a side yard. She said the Ordinance states it is a yard between a structure and a side lot line extending from the front yard to the rear yard. She asked, "is there a yard in a twin unit"? Mr. Grygiel said this type of use would be on the lot line and a wall is required. Mr. Kirkpatrick asked where it states that there shall be a line running through the building. Atty. Maziarz said a twin house is a single-family detached dwelling within a two dwelling building with only one wall in common with another dwelling. Mr. Kirkpatrick asked again where it states there shall be a lot line through the dwelling. Ms. Maziarz said if it is sharing a wall and you cannot have more than two principal uses on a lot it stands to reason the Ordinance is talking about a lot line. Mr. Kirkpatrick asked, "it is not in the Ordinance definition, correct". Mr. Grygiel believed he had already answered that question as far as the definition for the twin house. Mr. Ford asked about the possibility that the Ordinance contemplated different types of structures. Mr. Grygiel indicated that a forty-five foot

minimum lot width requirement would not seem practical for other types of dwellings. Mr. Kirkpatrick asked about the lot line for a duplex. Mr. Grygiel said a duplex is a different type of dwelling. Mr. Kirkpatrick asked if you could have two principal uses in that dwelling. Mr. Grygiel said 'Yes'. Mr. Kirkpatrick asked if there could be a condominium agreement rather than fee simple. Atty. Maziarz asked if it was possible that what the Ordinance means by twin house is a two-family house. Mr. Grygiel said that would be a reasonable interpretation. Ms. Maziarz noted the Ordinance does not allow multi-family houses in the VR District.

Mr. Kirkpatrick had questions regarding the requirement for side yard requirements. Are side yards required around each building? He said he heard no testimony other than that two side yards are not required. Mr. Kirkpatrick said, to him, it is very straightforward that in the VR District there must be two side yards around each building. He wanted more testimony pertaining to the latter. Atty. Anderson asked Ms. Maziarz if she had more questions. She said applicant was finished.

Atty. Anderson addressed Subsection 30-5.4. Mr. Anderson asked Mr. Grygiel if he had explored the meaning of unless otherwise provided for in this Section. Mr. Grygiel said it is open ended. Mr. Anderson said there is an explicit definition of the word Section in the Ordinance. Mr. Grygiel said he interpreted Section to mean the rest of the Ordinance. Mr. Anderson said if Mr. Grygiel believed that definition of Section, then twin homes might be an exception and the Footnote speaks to that. Mr. Grygiel said the Footnote addresses the yard requirements in one particular District; however, the Footnote does not address the number of principal uses on a lot. Atty. Anderson emphasized there is a difference in the two Districts so would that not be an exception? Mr. Grygiel said he did not view it that way. Mr. Ford said the Board is required to determine what the Ordinance says, not what it might say or should say. He said the Board has to draw their conclusions and make a decision on that basis.

Mr. Ford asked Board members if they had questions for Mr. Grygiel regarding whether twin homes in the VR District are required to have two side yard setbacks. Atty. Anderson asked Atty. Maziarz if applicant had anything specific. Ms. Maziarz said, "No, they did not have a report". Mr. Anderson said it was appropriate that the Board discuss and make a determination regarding the issue.

Mr. Kirkpatrick asked about comments and/or testimony from the Public. Mr. Ford invited members of the Public to speak to the issue. Kathleen Corcoran, 17 Midvale Drive, said as a Professional Planner, her Interpretation of the Ordinance would require two ten-foot setbacks for each dwelling. Atty. Anderson said Ms. Corcoran should be sworn, whereupon Atty. Anderson swore her. She stated her credentials and they were acceptable to the Board. Ms. Corcoran said her Interpretation of the Ordinance regarding the VR District is that ten-foot side yard setbacks are required on both sides of the structure.

Mr. Ford asked for questions for Ms. Corcoran. Atty. Maziarz asked Ms. Corcoran about the Footnote in the VR District and why would that Footnote not indicate that the Township Committee intended for there to be a more stringent requirement in the RM District and if that was the reason they did not put it in the VR District? Ms. Corcoran said the fact that they did not put the Footnote in the VR District is an indication that the Committee did not intend for one side yard to be acceptable. Atty. Maziarz said "or

perhaps any twin homes"? Ms. Corcoran said she could not speak to what the Township Committee was thinking when they created the Ordinance. Mr. Ford thanked Ms. Corcoran.

Mr. Kirkpatrick asked Atty. Anderson how to proceed. Atty. Anderson said the Board should discuss whatever it thinks is appropriate to arrive at a conclusion. Mr. Kirkpatrick made a motion to open a discussion to answer the question if twin homes in the VR District were required to have two side yard setbacks. He said the answer to that question is yes. Mr. Nace seconded the motion. Mr. Ford asked for comments from the Board. Mr. Kastrud commented on Ms. Malcolm's original memo. He agreed with three points in the memo including that there could have been an oversight by the Township Committee when the Ordinance was written. He agreed that two side yard setbacks are required on either side of a twin home dwelling.

Vote: Ayes: Mr. Kirkpatrick, Mr. Nace, Mr. Eschbach, Mr. Kastrud, Mr. Neary, Mr. Dix, Mr. Pettitt, Mr. Ford

Mr. Ford stated that the Board's Interpretation is that twin homes in the VR District are required to have specified minimum setbacks on both sides. He referenced the ancillary question about principal and accessory uses allowed on a lot in the District. Atty. Anderson said the action taken by the Board regarding Interpretation raised another question. Mr. Kirkpatrick said the issues surrounding principal buildings and uses are more complex than the question of the lot line. He preferred to hear more from the Board Planner and the applicant in that regard before addressing that issue.

Mr. Ford asked Mr. Kirkpatrick for a motion to close the matter of principal uses.

Motion: Mr. Kirkpatrick made a motion not to discuss the above issue further. Mr. Eschbach seconded the motion. Mr. Ford said Ms. Malcolm would be asked to provide guidance on the issue.

Vote: All Ayes No Nays, Motion Carried

Appointment of a Traffic Engineer: Mr. Ford said the Committee had appointed Walter Lublanecki as their Traffic Engineer. Mr. Kastrud made a motion that the Board also appoint Mr. Lublanecki as their Traffic Engineer. Mr. Nace seconded the motion.

Vote: All Ayes, No Nays, Motion Carried

Motion to Adjourn: Mr. Kirkpatrick made a motion to adjourn at 8:26 p.m. It was seconded by Mr. Kastrud.

Vote: All Ayes, No Nays, Motion Carried

Grace A. Kocher, Secretary

